

LEGAL NEWSLETTER

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- Mgaloblishvili, Kipiani, Dzidziguri (MKD) Law Firm

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Laws and International Treaties

The Law on Making Changes and Amendments to the Georgian Civil Code

dated 30 June 2005 distinguishes two forms of security interest: (a) possessed security interests, when based on the relevant agreement of the parties secured property is transferred in the possession of the secured creditor (pledgor) and (b) registered security interest created on the basis of the notarized agreement and further registered in the Public Register.

Subject of security interest may be any tangible item or intangible property that may be under the law transferred to third parties.

Upon the relevant agreement of the parties, all future property acquired by Pledgor, may also become subject of pledge.

Pledgor and pledgee can agree, that the object of security interest may not be alienated or pledged until the agreed security interest extinguishes.

Secured creditor may realize the object of security interest if the creditor fails to fulfill its obligations under the underlining transaction.

Pledgee is obliged to notify the pledgor and other creditors having interest in the object not later than

two weeks before the intended date of realization of object of security interest.

Further on, in case of registered secured interest, pledgor within a week after notifying the pledge and other creditors shall file application with the Public Register on the intention to realize the object of security interest. Realization is permitted after one week from filing such application with the Public Registry.

Forms of realization of the property is basically depends on the agreement of the parties. Thus, pledgee and pledgor may agree that realization may be executed by the pledgee himself on the basis of enforcement writ issued by notary. Parties may also agree on different ways for realizing the pledged property not foreseen under the law.

In any case proceeds gained after realized property shall reflect reasonable value of such property. If property has established market price, than realization of such property may be done via a specific trading body.

The Law enters into force from 1 March 2006.

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The Law on Making Changes and Amendments to the Georgian Law on Entrepreneurs dated 30 June 2005, prescribes the additional Article 5.41 according to which the security interest (pledge) on shares in Limited Liability Company shall be registered in the Entrepreneurial Register.

Following documents shall be submitted for registration:

- a) application drawn up by the pledgor and pledgee;
- b) agreement on pledge of shares authenticated by notary;
- c) relevant consent of partners, if prescribed under the charter of Limited Liability Company.

The Law enters into force from 1 March 2006.

Under the Law on Making Changes and Amendments to the Law of Georgia on Entrepreneurs dated 24 June 2005, introduces changes regarding formation and required minimum amount of charter capital in limited liability companies. Precisely minimum amount of the charter capital shall be reduced to GEL 200 formed only via monetary contribution of the partners.

Registration of enterprises shall be carried out by the tax bodies, instead of courts, according to the registered offices of enterprises.

The Law enters into force from 1 September 2005.

Following the Law on Making Changes and Amendments in Tax code of Georgia dated 30 June 2005, ownership title on property shall be registered on the basis of the relevant reference from tax authorities evidencing payment of property tax or non-existence of tax liabilities in connection to such property. Foregoing shall not apply to property owned by state or local self-government bodies and enterprises where more than 50% of shareholding is owned by the state or self-government bodies.

The Law enters into force upon its promulgation.

- **Following the Law on Making Changes and Amendments into the Law of Georgia on the Co-operation of Georgia with International Court of Criminal Justice**, dated 23 June 2005, the General Prosecutor of Georgia, and

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upon application of authorized body, applies to the Criminal Chamber of the Tbilisi City Court with a request to arrest a person, who is subject to extradition, within 48 hours. The Criminal Chamber of the Tbilisi City Court shall take a respective decision on issuing an arrest order within next 24 hours.

An arrested person who is subject to extradition is entitled to appeal against decision of the Criminal Chamber of the Tbilisi City Court within 5 days from a date of issuing an arrest order.

The Law on Making Changes and Amendments to the Law of Georgian on Natural Resources, dated 22 April 2005, introduces variety of terms for different types of licenses on use of natural resources such as from research license which is up to 5 years and to energy purposes license which is up to 45 years (e.g., for underground water resources-up to 25 years).

The amendments further provide that the holder of the license is vested with pre-emption right to apply for extension of its term by filing an application to the Ministry of Environment and Protection of Natural Resources not later than 6 months but not earlier than 18

months before expiry of a license term; a respective application on extension shall be reviewed and determined by the Ministry within 1 month.

The only exception to the pre-emption rule shall be the case, when use of natural resources is conducted nearby and/or related and/or has an impact over strategically important natural resources, the list of those to be further determined by a separate act by the Government of Georgia.

The Law provides, that for strategically important resources a new competition shall substitute application (request) for extending a license term.

Another rule of exception under the Amendments is that a license shall be for indefinite term, if connected with construction of reservoirs for hazardous substances and waste products or connected with any other construction for developing social infrastructure and has important state purposes. Such type of constructions more specifically shall be determined by the Government of Georgia.

- The Amendments do also elaborate on activities which shall be subject to state control and supervision and

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provides for detailed listing in this regard. Additional emphasize is made upon identifying criteria for usage, exploration or processing of natural resources.

The Amendments specifically stipulate that any activities on illicit usage of natural resources shall be ceased without providing for any payment of costs.

The New Law on Licenses and Permits, dated 24 June 2005, significantly reduces the number of Licenses and Permits applicable for various forms of business operations in Georgia. Thus types of licenses and permits are exhaustively enlisted in articles 6, 7 and 24 of the said Law.

Licenses and permits are required only for conducting activities involving significant state and human interests or are connected with the use on natural recourses.

Broadly speaking, the Law distinguishes four categories of licenses:

- a) License on Use;
- b) License on Activity;
- c) Special License;
- d) General License.

Licenses are issued for unlimited term.

In addition the Law determines three categories of permits: limited, unlimited and for one occasion only.

Licenses and permits, issued in foreign states may be vested with the same legal status as issued in Georgia if so determined under the law or international treaty.

Unlike the previous edition of the Law, the licenses and permits are required for entrepreneurial and non-entrepreneurial activities as well. In addition the branch office is released from obligation to hold a license.

According to **Amendments to the Law of Georgia on Management and Disposition of State-Owned Non-Agricultural Land**, dated 22 April 2005, decision on possession and alienation of state-owned non-agricultural land shall be taken by local government and self-government bodies in accordance with the Law of Georgia on Local Self-government and Government, the Law of Georgian on Natural Resources and respective secondary laws.



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Georgian Parliament has ratified the **Treaty on Co-operation and Assistance in the field of Customs among Government of Georgia and Government of the Republic of Latvia**, dated 5 July 2000, pursuant to the Parliamentary Resolution No1653-Is dated 16 June 2005.

Georgian Parliament has ratified **the Treaty on Co-operation and Assistance in the field of Customs among Government of Georgia and Government of the Republic of Estonia**, dated 22 August 2000, pursuant to the Parliamentary Resolution No1654-Is dated 16 June 2005.

Mgaloblishvili, Kipiani, Dzidziguri (MKD) law firm was founded in November 1996. It operates as a general partnership and is recognized as well-established, respected leading law firm in Georgia with major national, regional and international clients.



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